



**Ontario
Energy
Board**

IN THE MATTER OF THE
MUNICIPAL FRANCHISE ACT

AND

IN THE MATTER OF THE
ONTARIO ENERGY BOARD ACT

AND

IN THE MATTER OF AN
APPLICATION BY

THE CONSUMERS' GAS COMPANY LTD.

FOR LEAVE TO CONSTRUCT A PIPELINE IN THE
TOWNSHIP OF ORO AND MEDONTE

E.B.L.O. 232

AND

AN APPLICATION BY

ICG UTILITIES (ONTARIO) LTD

FOR VARIATION OF A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY E.B.C. 139-A

E.B.C. 139-B

DECISION WITH REASONS

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Ontario Energy Board



Government
Publications

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DECISION WITH REASONS

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IN THE MATTER OF the Municipal Franchises Act, R.S.O. 1980, Chapter 309 and, in particular, Section 8 thereof;

AND IN THE MATTER OF the Ontario Energy Board Act, R.S.O. 1980, Chapter 332 and, in particular, Sections 30, 46 and 48 thereof;

AND IN THE MATTER OF an application by The Consumers' Gas Company Ltd. for leave to construct a natural gas pipeline in the Townships of Oro and Medonte;

AND IN THE MATTER OF an application by ICG Utilities (Ontario) Ltd for the variation of the certificate of public convenience and necessity issued under Board File No. E.B.C. 139-A to include an additional part of the Horseshoe Valley area in the Township of Oro, County of Simcoe;

BEFORE: D.A. Dean
Presiding Member

O.J. Cook
Member

C.A. Wolf Jr.
Member

September 6, 1989

DECISION WITH REASONS

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1. THE APPLICATIONS

- 1.1 The Consumers' Gas Company Ltd. (Consumers Gas, the Company or the Applicant), filed an application dated March 28, 1989, with the Ontario Energy Board (the Board) requesting an Order granting leave to construct a 4 inch diameter pipeline to originate at the existing Consumers Gas 8 inch diameter Georgian Bay pipeline at a point adjacent to Simcoe County Road 22 at Lot 1, Concession XI, Township of Oro, and to extend westerly on the south side of Simcoe County Road 22 to Lot 1, Concession IV, Township of Oro and then southerly along Concession Road 4 to Lot 4. This application was heard under Board File No. E.B.L.O. 232.
- 1.2 ICG Utilities (Ontario) Ltd (ICG, the Company or the Applicant) filed an application with the Board on April 26, 1989, for a variation of its certificate of public convenience and necessity issued under Board Order E.B.C. 139-A. The

variation would permit the proposed construction of works to supply natural gas to that further part of the Horseshoe Valley area development in Oro Township that is bounded by Simcoe County Road 22 in the north, Oro Township 4th Line Road in the east, Bass Lake Sideroad in the south, and Simcoe County Road 57 in the west. ICG's application was heard under Board File No. E.B.C. 139-B.

1.3 Notices of both applications and of hearing were served on all affected parties as directed by the Board. A Procedural Order was issued by the Board combining Consumers Gas' and ICG's applications for the purpose of the hearing thereof.

1.4 Consumers Gas and ICG intervened in each other's cases. The evidence presented by each company in support of its application was considered as intervenor evidence in the other's case.

2. BACKGROUND

- 2.1 Both ICG and Consumers Gas submitted applications before the Board which would allow each of them to expand their systems to service new developments in the Horseshoe Valley area. Although Horseshoe Valley has no municipal status, it was characterized as a community with potential growth in Oro and Medonte Townships.
- 2.2 The Board approved Consumers Gas' municipal franchise (franchise) and certificate of public convenience and necessity (certificate) to supply gas in the Township of Oro on October 27, 1977. These were issued under Board Orders E.B.A. 260 and E.B.C. 102 respectively.
- 2.3 On June 8, 1988, the Board approved the construction of Consumers Gas' 8 inch diameter Georgian Bay pipeline under Board Order E.B.L.O. 223. This pipeline originates on the

TransCanada PipeLines Limited (TCPL) system, at the Rugby Gate Station in Oro Township, and runs north through the Townships of Oro, Medonte and Tay.

- 2.4 Consumers Gas, as part of its application for the Georgian Bay line, applied for a franchise and certificate to supply gas in the Township of Medonte. These were approved by the Board on June 8, 1988 under Board Orders E.B.A. 492 and E.B.C. 183.
- 2.5 A second franchise and certificate to supply gas in Oro Township was granted to ICG on September 14, 1984 under Board Orders E.B.A. 435 and E.B.C. 139 respectively. The Board also approved, on that date, an ICG pipeline to serve the Edgar Adult Educational Centre and the Horseshoe Valley resort area under Board Order E.B.L.O. 204. ICG currently holds no franchise or certificate to supply gas in Medonte Township.
- 2.6 On November 1, 1984, Consumers Gas applied to the Board to restrict ICG's franchised and certificated area in Oro Township to only the areas served by the pipeline approved in E.B.L.O. 204. The Board held a hearing, and on June 25, 1986 issued Board Order E.B.C. 139-A to vary ICG's certificate, limiting ICG's

service to the Hamlet of Edgar, the Edgar Adult Educational Centre and the Horseshoe Valley Resort Complex with its associated residential development south and east of Simcoe County Road 22.

- 2.7 ICG applied to the Board on June 29, 1988 to loop its existing pipeline in Oro Township to expand its service in the Horseshoe Valley area. This application was assigned Board File No. E.B.L.O. 228. Accompanying ICG's leave to construct application were applications for limited certificates to supply gas in the Townships of Medonte and Oro in the area of Horseshoe Valley, and for approval of a franchise for the Township of Medonte. These applications were heard under Board File Nos. E.B.C. 187, E.B.C. 139-A and E.B.A. 503.
- 2.8 The Board reserved its Decision on ICG's applications for leave to construct, for certificates, and for an additional franchise in the Horseshoe Valley area pending further assurances that the expected development in Horseshoe Valley would materialize.
- 2.9 On November 10, 1988, ICG wrote to the Board detailing its plans for additional service in the Horseshoe Valley area. In that letter ICG also sought clarification of the boundaries of

the area that could be served by it under its E.B.C. 139-A certificate. The Board's response of December 6, 1988, indicated that ICG was to be restricted to the area being served at the time the E.B.C. 139-A certificate was issued. The Board further stated, in its letter of February 27, 1989, that any further expansion in ICG's services to the Horseshoe Valley area would require an amended certificate.

3. THE HEARING

- 3.1 The hearing of the combined applications commenced in Toronto on July 11 and was completed on July 12, 1989. Consumers Gas presented its evidence first, followed by ICG. All arguments were presented orally on the final day of the hearing.
- 3.2 Both Consumers Gas and ICG presented evidence in support of their applications for service to the Horseshoe Valley area. Each company presented a market forecast, system expansion and the economic feasibility of their respective projects. A series of witness panels gave testimony on behalf of each of the companies and were cross-examined on these issues.

Appearances

- 3.3 K. Rosenberg Counsel to Board Staff

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P.Y. Atkinson

Counsel to Consumers
Gas

A. Dadson

Counsel to ICG

Witnesses

3.4 D.C. Wollstein Sr. President, Horseshoe
Valley Development
Corporation, as a
friend of the Board

For Consumers Gas

Consumers Gas employees:

W. Smith

Regional General
Manager

C. Paglialunga

Business Development
Manager

J.C. Grant

Manager of Financial
Studies

G.T. Ashby

Regional Manager,
Planning and Technical
Services

Others:

W. King

Vice President,
Brethour Research
Associates

J. Orser

Environmental
Technologist, Acres
International Ltd.

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For ICG

ICG employees:

P.D. Pastirik	Manager of Financial Planning
F. Suraci	District Sales Supervisor
R. A. Jutras	Supervisor of Sales and Marketing
B.M. Bailey	General Sales Manager
M.A. Wolnik	Vice President Operations
D.K. Harvey	Manager of Distribution

3.5 A copy of all exhibits filed in the hearing and a transcript of the proceeding are available for public examination in the Board's office.

4. ICG's APPLICATION TO VARY A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

- 4.1 ICG's proposed project required the variance of the certificate issued under Board File Number E.B.C. 139, as varied by Board Order E.B.C. 139-A. ICG proposed to construct works to supply natural gas and to supply natural gas incrementally as development progresses in Horseshoe Valley.
- 4.2 ICG, through its application to vary its certificate under E.B.C. 139-A, sought to expand the boundaries within which it could provide natural gas service. This application dealt specifically with extending service to the Horseshoe Valley area in Oro Township known as Horseshoe Highlands.

Positions of the Parties

ICG

4.3 ICG stated that an increase in the maximum allowed operating pressure on its existing NPS 2 pipeline, currently serving the community of Edgar, the Edgar Adult Educational Centre and Horseshoe Valley, could allow service to an additional 800 customers in Horseshoe Highlands. The cost to upgrade ICG's system was estimated to be \$13,000.

4.4 ICG introduced the concept of a "Buffer Zone". It filed a series of maps which delineated the proposed Buffer Zone. ICG's pre-filed evidence included a letter from Consumers Gas to ICG wherein the Buffer Zone was described as follows:

The "Buffer Zone" extends from the CP tracks in Medonte southwards to the TCPL transmission line, with the Oro Township 5th Concession Line being the eastern boundary and Craighurst (Highway 93) forming the western boundary.

4.5 Mr. Wolnik submitted that the Buffer Zone could be established to identify a geographically distinct area to be served exclusively by ICG.

- 4.6 Mr. Wolnik indicated that the Buffer Zone was designed to envelop the area of potential growth in the immediate vicinity of Horseshoe Valley.
- 4.7 ICG added that the Buffer Zone had been established as a result of the Board's directions in its E.B.L.O. 228 Decision that a common understanding be developed between ICG and Consumers Gas with regard to servicing the area.
- 4.8 Mr. Wolnik stated that, with the Board's approval, ICG could also easily serve Medonte Township by upgrading its existing system at minimal expense. Customer growth beyond 800 new additions would, however, require the looping of ICG's existing system. ICG testified that looping the existing pipeline to further increase capacity in the Horseshoe Valley area could be done on an incremental basis as development proceeds.
- 4.9 Mr. Dadson stated that, although ICG had an interest in serving the Medonte Township section of Horseshoe Valley, plans for the development of this area had not advanced sufficiently to bring forward an application.

4.10 ICG presented a market forecast that had been developed by its sales staff largely as a result of its discussions with Mr. Wollstein Sr.

4.11 ICG's market forecast indicated the following capture rates in Oro Township:

<u>Forecast Year</u>	<u>Single Residences</u>	<u>Condominiums</u>
1990	50	90
1991	73	90
1992	100	40

4.12 Mr. Bailey stated that Mr. Wollstein Sr. was certain that gas would not be required in Medonte Township until at least 1990. ICG concluded that its proposal to incrementally increase the capacity of its existing system in Oro Township would, therefore, be an advantage.

4.13 ICG stated that it currently provides service to 105 customers in the vicinity of Horseshoe Valley and that 1,079 additional units will be constructed. ICG testified that it expects to capture 800 of these, and that Mr. Wollstein Sr. had reviewed ICG's forecast and agreed with it.

- 4.14 ICG stated that it is presently precluded, under its current certificate, from serving Medonte Township, Sugarbush and other potential developments outside the current Horseshoe Valley recreational and residential complex.
- 4.15 ICG informed the Board that a terraced building design was to be used in the construction of 443 condominium units in Phase III of the development. ICG stated that experience has shown that it is more difficult to service this type of multi-family dwelling with gas and, therefore, these units would most likely be heated electrically.
- 4.16 ICG submitted that, when choosing between its proposal and Consumers Gas' proposal for gas service in the Horseshoe Valley area, the Board should consider economic feasibility to be the primary criterion when assessing the public interest.
- 4.17 ICG stated that its environmental assessment had determined that environmental disruptions would be insignificant if it were to incrementally expand its distribution system, and eventually loop its existing line. Mr. Dadson specified that the looping would be largely along ICG's existing right-of-way.

- 4.18 ICG focussed upon whether revenues from the project would justify its cost and whether the project would be in the best interests of present, rather than future, ratepayers. ICG argued that the Horseshoe Highlands development represents an economically viable growth area that it is proposing to service through a logical and efficient project to extend and more fully utilize its existing system.
- 4.19 ICG made reference to E.B.L.O. 225, an application by Consumers Gas for certificates to construct works to supply gas and to supply gas to the inhabitants of Hope and Hamilton Townships where ICG holds franchises.
- 4.20 In E.B.L.O. 225 the Board denied Consumers Gas the right to service customers in the Townships of Hope and Hamilton as they could adequately be served by ICG under its existing franchise and certificate.
- 4.21 ICG differentiated its application from E.B.L.O. 225 on the basis that in E.B.L.O. 225 Consumers Gas was not serving customers in Hope and Hamilton Townships, whereas in this case ICG was applying to service properties adjacent to its existing service area. ICG also made the distinction that Consumers Gas' pipeline in

E.B.L.O. 225 was a transmission line, whereas ICG's present application deals with a distribution line.

4.22 ICG concluded that, based on the Board's Decision in E.B.L.O. 225, it should be entitled to expand its service in the Township of Oro to include that further part of Horseshoe Valley known as Horseshoe Highlands.

4.23 ICG submitted that the considerations of the public interest which were recognized by the Board in its generic hearing into franchise agreements (E.B.O. 125) also apply with respect to competing applications for certificates.

4.24 In its E.B.O. 125 Decision the Board determined that an assessment of the public interest would include an analysis of the economic feasibility of the supply of gas and the impact that a second franchise would have on the customers of the first franchisee.

4.25 ICG concluded that the public interest will be better served by allowing it to supply the Horseshoe Highlands development. It submitted that its application represents a cost efficient, technically feasible proposal that is able to meet the needs of the developer in 1989. ICG reiterated that its proposal

provided flexibility in regard to the foreseeable growth in Medonte Township without incurring heavy capital costs before that growth materialized.

Consumers Gas

4.26 Consumers Gas referred to the history of the franchises and certificates in Oro Township. Consumers Gas holds the original franchise and certificate for Oro Township and submitted that ICG established itself in Oro "by mistake" in 1984. The claim that a mistake had been made was based on Consumers Gas not having been notified of ICG's application for a franchise and certificate at that time and not participating in the E.B.L.O. 204 proceeding. Consumers Gas submitted that, because its franchise and certificate were obtained prior to ICG's limited certificate, the Board's decision in 1986 to limit ICG to the area which it was serving at the time of its review application remains appropriate.

4.27 Consumers Gas stated that, although it had raised objections to ICG's presence in Oro Township as quickly as it could, ICG continued placing plant and facilities within Oro Township, notwithstanding Consumers Gas' application to limit ICG's presence. Consumers

Gas submitted that ICG was, in its current application, similarly attempting to push Consumers Gas out of the Horseshoe Valley area in Oro and Medonte Townships, attempting to stake out that area as its own and make it impractical for Consumers Gas to ever be able to demonstrate the economic feasibility of its servicing that area.

- 4.28 Consumers Gas characterized ICG's application as an attempt to establish itself in Horseshoe Valley without any concern for Consumers Gas' preexisting franchise rights. It considered ICG's encroachment into Consumers Gas' franchise area in Oro Township as a precursor to entering Medonte Township by positioning itself to again preempt Consumers Gas.
- 4.29 Consumers Gas pointed out that when ICG was expending time and effort to develop service in the Horseshoe Valley area it knew that it could not serve that area without a further Board order, and that Consumers Gas had a certificate and franchise permitting it to service all of Oro Township.
- 4.30 Consumers Gas suggested that ICG got what it sought in Oro Township when it applied for a certificate in 1984, and it should now be content to allow Consumers Gas to exercise its

preexisting franchise rights. Consumers Gas pointed out that ICG's intention is to go far beyond maximizing the potential of its existing facility. In effect, Consumers Gas submitted, ICG was attempting to take over a substantial service area so that it can build more facilities to the exclusion of Consumers Gas.

4.31 Consumers Gas submitted that the Board must look at future customers when determining the terms of a certificate. It submitted that future gas customers in Oro Township would want to pay the lowest possible rates and they would undoubtedly prefer that Consumers Gas be their supplier because its rates are lower than ICG's.

4.32 Consumers Gas compared the present case to E.B.L.O. 225 in which ICG successfully sought to have its preexisting franchise rights in Hope and Hamilton Townships recognized. Consumers Gas submitted that it is not doing anything more in this case than what ICG did in that case.

4.33 In E.B.L.O. 225 the Board decided that as ICG held the initial franchise and certificate for Hope and Hamilton Townships, it was, therefore, entitled to expand its service in the area. The Board granted Consumers Gas a certificate

to construct a transmission line through Hope and Hamilton Townships, but not to service customers adjacent to that line. The Board expected ICG to reserve space on Consumers Gas' line to transport the gas that ICG might require to meet demands in the vicinity of Consumers Gas' transmission line.

4.34 Consumers Gas submitted that it holds franchise and certificate rights for Oro and Medonte Townships and that it has demonstrated what is normally required to support a leave to construct application.

4.35 Consumers Gas pointed out that a decision in favour of ICG in this case would limit Consumers Gas' certificate and franchise, and that the Board should only do that in the clearest and most compelling of cases. Mr. Atkinson argued that such circumstances did not exist in this case.

4.36 Mr. Atkinson pointed out that the Board had taken the position that a second franchise could be granted in situations where it is not economically feasible for the utility holding a franchise to serve an area. He held, however, that this criterion is an exception to the rule and that it cannot be applied based on the evidence in this case. In order to

disenfranchise Consumers Gas, Mr. Atkinson argued it would have to be impossible for Consumers Gas to economically provide service.

- 4.37 Consumers Gas made no submissions on the environmental implications of ICG's proposal to upgrade its existing NPS 2 pipeline system.

Board Staff

- 4.38 Mr. Rosenberg pointed out that the Board has recognized in the past that there may be competing franchise applications. In E.B.O. 125 the Board specifically addressed this situation and acknowledged that in such cases it would have to be determined whether it would be in the public interest to approve the construction of works under a second franchise in an already franchised municipality.

- 4.39 Counsel to Board Staff argued that considerations in competing cases could include the economic feasibility of supply and the impact that a second franchisee would have on the system and customers of the first franchised utility. Mr. Rosenberg submitted that the Board must consider Consumers Gas to be the second franchisee because ICG's pipeline system was already in place in the Horseshoe Valley area. Therefore, in applying these

considerations the Board must look at the economic impact on ICG's existing customers of a Consumers Gas pipeline.

4.40 Counsel to Board Staff submitted that, while neither ICG's nor Consumers Gas' case is conclusive, the more compelling case was in support of ICG's application for a variation of its certificate to allow it to serve the Horseshoe Highlands development.

4.41 Counsel to Board Staff claimed to have reached this conclusion by applying the considerations set out in E.B.O. 125 and assessing the economic feasibility of Consumers Gas' project and its impact on the system and customers of ICG.

4.42 Counsel to Board Staff submitted that the arguments put forward by Consumers Gas in relation to its rate advantage over ICG, the conduct of ICG from 1984 to 1989 in the Horseshoe Valley area, combined with its applications before the Board with respect thereto, and the history of franchises and certificates in the area were neither compelling nor conclusive. Mr. Rosenberg submitted that the evidence presented by Consumers Gas was not strong enough to disenfranchise ICG and

that extraordinary evidence would be required in order to do so.

4.43 Counsel to Board Staff observed that there were no environmental implications involved in ICG's proposed pressure increase. Mr. Rosenberg also noted that the eventual looping of ICG's existing line would be within an established right-of-way.

4.44 In favour of ICG's application, Counsel to Board Staff also observed that the market in the Horseshoe Valley area is fluid at best, and that an incremental approach should be preferred over Consumers Gas' proposal to make a large capital investment today in markets that are uncertain over the short, medium and long-term.

4.45 Mr. Rosenberg submitted that it makes more business sense to prefer ICG's incremental, flexible approach when all the demand that has been forecast relies on one developer whose financial strength is unknown. Furthermore, he stated that ICG's proposal allowed it to maximize the potential of its present pipeline, which ICG should be entitled to do.

5. CONSUMERS GAS' APPLICATION FOR LEAVE TO
CONSTRUCT

- 5.1 Consumers Gas' proposed project involved the construction of 12.7 kilometres of 4 inch diameter pipeline in Oro Township. This pipeline would originate at the Company's 8 inch diameter Georgian Bay pipeline and continue west along Simcoe County Road 22 to Horseshoe Valley. Consumers Gas testified that the Georgian Bay line could easily accommodate the gas volumes required to serve Horseshoe Valley. The total cost to construct the 4 inch diameter pipeline to Horseshoe Valley was estimated to be \$633,000.

Positions of the Parties

Consumers Gas

- 5.2 Consumers Gas' proposal was designed to serve the growth in Horseshoe Valley in both Oro and

Medonte Townships as well as customer additions along the pipeline route. The Company testified that the new pipeline could serve over 2,300 new customers without detracting from its ability to meet other demands on its Georgian Bay line.

- 5.3 Consumers Gas' evidence was that a retirement lifestyle market was developing rapidly in the Horseshoe Valley area and that natural gas service would be in the public interest. Mr. Atkinson stated that the evidence of both Consumers Gas and ICG established a need for service in the area.
- 5.4 It was Consumers Gas' position that its proposed pipeline project would offer more flexibility to serve future customer additions than would ICG's proposal. Consumers Gas claimed its proposed line could serve all the projected growth in Horseshoe Valley as well any other communities that might be developed in the area.
- 5.5 Consumers Gas' witnesses pointed out that ICG's proposal to loop its existing system in the future would not allow ICG to serve any new areas beyond those adjacent to the pipeline route. Mr. Ashby held that customers along the

route of ICG's pipeline were already served with gas and would not need access to a second line.

5.6 Consumers Gas testified that, by providing a second supply route, its pipeline would offer greater security of supply to the Horseshoe Valley area and that there would be no difficulty in tying into ICG's existing system.

5.7 Consumers Gas submitted that its application was for a routine leave to construct and there were no significant environmental problems identified in the environmental assessment report which it filed with the Board.

5.8 In response to Counsel to Board Staff's questions on any perceived safety or customer-use problems that might arise if the two companies were to operate in the same area, Consumers Gas indicated that there would be no such difficulties. The Company said it would properly inform its customers and local police and fire departments as to where to go for information, and on the procedures to be followed in emergencies.

5.9 Mr. Smith identified the existing golf course and ski hill as natural boundaries which

delineate ICG's existing service area from Consumers Gas' proposed service area.

- 5.10 Consumers Gas argued against ICG's buffer zone concept. Terming the proposal "ridiculous", Consumers Gas submitted that it could never consent to a large portion of its franchise and certificate rights in two townships being paralyzed.
- 5.11 Mr. Dadson questioned whether Consumers Gas could meet its construction schedule given the delays already experienced in approval of its project. Consumers Gas acknowledged that there could be some construction delays but that the Company would carry on construction activities in the fall or winter if required.
- 5.12 Consumers Gas pointed out that an application to amend the Official Plan of Oro Township to include a new development of 572 residential units called Buffalo Springs had been made by a developer. Consumers Gas identified Buffalo Springs as being located between the communities of Coulson and Jarratt, one Side Line south of Horseshoe Valley Road. Consumers Gas indicated that, if its application is approved, it could provide service to the existing communities of Jarratt and Coulson as well as any proposed

developments such as Buffalo Springs in the Townships of Medonte and Oro.

- 5.13 Consumers Gas stated that discussions regarding potential customer additions had taken place with Mr. Wollstein Sr., and that he generally agreed with Consumers Gas' projections for the next 15 years.
- 5.14 Consumers Gas' market forecast indicated the capture of 68 single residences in year 1, 100 single residences in year 2, 50 condominiums and 100 single residences in year 3, 40 condominiums and 100 single residences in year 4.
- 5.15 Consumers Gas stated that it was unaware of the further Horseshoe Valley area developments at the time it submitted its Georgian Bay pipeline application. Mr. Smith indicated that Consumers Gas became aware of the development only after the hearing of that pipeline application had commenced.
- 5.16 Consumers Gas indicated that the overall feasibility of its proposal was demonstrated by its two-stage cost/benefit analysis. Consumers Gas testified that the negative \$515,800 net present value that resulted from its stage-one public interest test was off-set by its

stage-two analyses of the quantifiable customer and economic benefits of the project. Consumers Gas' stage-two public interest test yielded an overall positive net present value of \$1,641,800.

5.17 Consumers Gas indicated that the most substantial of the stage-two benefits are the fuel savings to new customers in Horseshoe Valley. Mr. Grant stated that ICG had not provided an analysis of such savings to its customers.

5.18 Consumers Gas stated that it had included the provision of service to Medonte Township in its calculations. Consumers Gas added that, had ICG included the provision of service to Medonte Township in its discounted cash flow (DCF) analysis, a stage-two analysis would also have been necessary.

ICG

5.19 ICG argued that one of the key elements the Board must consider in making its Decision is the economic feasibility of each company's proposal. Mr. Dadson pointed out that Consumers Gas' proposed project had a negative \$515,800 net present value when tested by a

stage-one DCF analysis. He submitted that Consumers Gas' proposed expenditures had to be committed in advance and that Ontario rate-payers would, as a result, bear the carrying costs of the pipeline until the developments in Horseshoe Valley become a reality.

5.20 ICG calculated the stage-one net present value of its project to be a positive \$3,100. Mr. Pastirik claimed that the project is therefore economic as it meets the minimum requirements of a stage-one DCF test. ICG held that a stage-two cost/benefit analysis was, therefore, not required.

5.21 Mr. Dadson submitted that ICG's proposal would not require a subsidy by ICG's other customers since it had a positive net present value as determined by a stage-one analysis.

5.22 It was ICG's position that any rate differential that may exist between the two companies would not have the impact that Consumers Gas attributed to its lower rates. Mr. Dadson claimed that an improved purchased gas load factor would result from ICG's proposal to increase its storage capacity and that this, in

turn, would reduce the current differential between ICG's and Consumers Gas' rates.

5.23 Mr. Dadson reiterated the benefits that would result from allowing ICG to serve the Horseshoe Valley area incrementally, using its existing system. He pointed out that Consumers Gas' application, which depended on the economics of serving the Medonte portion of Horseshoe Valley, was premature, considering the uncertainty of the development in Medonte Township.

5.24 Mr. Dadson argued that extending ICG's certificate in the Horseshoe Valley area would have no impact on Consumers Gas' customers or its system. He pointed out that service to Horseshoe Valley was not part of Consumers Gas' plan when it proposed the Georgian Bay reinforcement project.

5.25 ICG made no submission regarding the environmental impacts of Consumers Gas' proposed pipeline.

Board Staff

5.26 Mr. Rosenberg expressed concern over the several discrepancies between Consumers Gas' and ICG's market forecasts for the Horseshoe

Valley area. Consumers Gas agreed that there were apparent differences between each company's forecast. In response, Mr. Paglialunga explained that Consumers Gas' projections for Horseshoe Valley additions were based on discussions with Mr. Wollstein Sr. Mr. Paglialunga added that similar discussions with developers outside the Horseshoe Valley area in the Townships of Medonte and Oro are ongoing and are encouraging.

5.27 Mr. Rosenberg argued that the rate differential between ICG and Consumers Gas should not be a factor in the Board's Decision in this case. He stated that ICG is attempting to lower the differentials, but the evidence is that the differentials currently exist.

5.28 Counsel to Board Staff submitted that ICG could provide more economic service to Horseshoe Valley than could Consumers Gas. He noted that by better utilizing its existing pipeline ICG could serve an additional 800 customers at a minimal cost. He pointed out that Consumers Gas would require substantially greater expenditures and that its pipeline might be under-utilized for several years while development in the area progresses.

5.29 Counsel to Board Staff indicated that he had reviewed the environmental assessment report filed by Consumers Gas and he agreed that there would be no significant environmental impacts associated with its proposed pipeline.

6. MR. D.C. WOLLSTEIN SR.'S TESTIMONY

- 6.1 During the course of the hearing the Board invited Mr. D.C. Wollstein Sr. to appear before the Board to help clarify apparent inconsistencies in the market forecasts submitted by each Company, and to provide insight into the plans to develop the Horseshoe Valley resort area.
- 6.2 It was determined by the Board that it would be inappropriate for Mr. Wollstein Sr. to be called on behalf of Consumers Gas or ICG. The Board directed that Mr. Wollstein Sr. be invited to appear as a friend of the Board. None of the parties objected to Mr. Wollstein Sr. appearing.
- 6.3 At the Board's invitation, conveyed by Consumers Gas, Mr. Wollstein Sr. voluntarily appeared and testified on the second day of the proceeding.

- 6.4 Mr. Wollstein Sr. described his background and involvement in the development of the Horseshoe Valley area. He indicated he was the president of Horseshoe Valley Development Corporation, which owns the majority of land in the immediate vicinity of Horseshoe Valley.
- 6.5 Mr. Wollstein Sr. stated that Consumers Gas' market forecasts for years 1, 2 and 3 and those by ICG for 1989, 1990 and 1991 are almost identical. He added that it is difficult to determine precisely the number of units to be constructed in any one year. He felt the yearly variations between ICG's and Consumers Gas' forecasts were not significant. He noted that the three-year forecast totals for both companies were very close and were reasonable.
- 6.6 Mr. Wollstein Sr. stated that Consumers Gas' forecast of total construction was accurate but the composition of condominiums and single residences would likely be reversed from what Consumers Gas had forecast and would more likely be 50 single residences and 100 condominiums. He added that for years 1, 2 and 3 of Consumers Gas' forecast the total number of single residences was overstated. He indicated that his Corporation was only capable of delivering 525 single residences and 443 condominiums in total in that period.

- 6.7 Mr. Wollstein Sr. informed the Board that the difference between the forecasts of ICG and Consumers Gas was marginal and might be explained by differences in the assumptions as to when the units would come on-stream. He added that his corporation is presently planning the installation of a sewage treatment facility which could further increase the forecast growth of the proposed development to 4,000 residential units.
- 6.8 Mr. Wollstein Sr. stated and explained his preference for natural gas over other energy forms and indicated his intention to incorporate the use of gas in his developments in Horseshoe Valley, if it is available. He confirmed that the builders of the current units are including hook-ups for propane service which can be easily converted to natural gas once it is available.
- 6.9 Mr. Wollstein Sr. acknowledged that some development would occur in the areas of Medonte and Oro Township beyond Horseshoe Valley. He stated that a property adjacent to Horseshoe Valley had just sold for \$8,000 an acre. He added, however, that the majority of development in these Townships will occur in the immediate vicinity of Horseshoe Valley.

6.10 Mr. Wollstein Sr. stated that Horseshoe Valley, as a community, could be described as including both the existing and proposed subdivisions in that all these developments are integrated with, and rely on, the common four season recreational facilities.

7. BOARD FINDINGS

- 7.1 The Board has concluded that, if considered individually, the public interest could be served by either ICG's or Consumers Gas' proposal. However, the Board takes the position that, when there are competing applications, recognition must be given to the right of a current franchise and certificate holder to reasonably expect to be afforded the opportunity to capitalize on the opportunities that emerge within its authorized area.
- 7.2 In the Board's view, a utility holding an existing franchise has a priority right to serve that area, unless it can be established that the franchisee cannot economically serve, or is not interested in providing service to the area in question. The Board has concluded that this is clearly not so in the present case.

- 7.3 The Board notes that the costs for ICG to serve Medonte Township and other areas in the vicinity of the current Horseshoe Valley complex were not fully displayed and, as Mr. Rosenberg observed, a comparison of the two competing applications is, in essence, not a comparison of like with like. The Board feels it would be a mistake to focus exclusively on the immediate 800 unit Horseshoe Highlands expansion to the exclusion of other reasonably forecastable developments. The Board agrees with Consumers Gas' contention that the needs of future customers must be taken into account.
- 7.4 The Board expects that the incremental expansion of an existing facility will likely always provide an economic advantage over the construction of an all-new facility, particularly if the existing facility has been oversized or is under-utilized.
- 7.5 The Board shares Consumers Gas' concern that to override the priority right of a current franchise holder, solely by virtue of a competitor's ability to show an economic advantage through the extension of existing facilities, could constitute an invitation for creeping encroachment. The Board is of the opinion that, in the matter currently before it, a decision to override Consumers Gas'

priority right would not be justified. The Board notes that the affected customers will experience no current rate advantage under ICG's proposal as opposed to their being supplied by Consumers Gas, even though the Consumers Gas' project is initially more costly.

7.6 The Board recognized in E.B.O. 134 that there would likely be situations where a stage-one DCF analysis alone would not fully reflect the public interest advantages of a proposed project. As a result, the Board in that Decision endorsed the use of stage-two and stage-three analyses. The Board, therefore, concludes that it would be wrong to reject a project solely on the basis of the comparative results of stage-one analyses.

7.7 The Board is satisfied that, with the inclusion of the stage-two analyses results, Consumers Gas' proposal meets the Board's requirements for the demonstration of economic feasibility.

7.8 The Board observes that it is normal to size and construct capital projects to provide advance capability to meet future demands. Therefore, the fact that Consumers Gas' proposed facilities will be under-utilized in the early years of the project is, in and of itself, not a reason to reject the proposal.

- 7.9 In the Board's view, the fact that the utilization of ICG's existing facility can be further optimized, at a relatively lower cost, does not negate the fact that its current pipeline was initially sized and installed to serve the limited area defined in the Company's evidence in E.B.L.O. 204, and that ICG was, at that time, content to employ the facility for that limited purpose.
- 7.10 The Board has concluded that the Consumers Gas proposal has the important advantage of being able to supply emerging demands in areas such as Buffalo Springs, which are not immediately adjacent to the Horseshoe Valley resort/residential community.
- 7.11 The Board is of the opinion that a reasonably clear differentiation of the areas served by different utilities is desirable. The Board expects that the current natural boundaries of ICG's current service area (i.e. the ski slope and golf course) can provide such a delineation. Also, the Board notes Consumers Gas' commitment to ensure that all affected parties are kept informed as to the Company's service area limits and emergency procedures. The Board observes that it is to be expected that utility franchises will abut one another and, in that regard, the circumstance in this

case is no more complex than that which will occur elsewhere. In its E.B.L.O. 228 Decision the Board sought to obtain cooperation between the franchisees as much as it sought a clear delineation of service areas. The Board hopes this cooperation between the parties will yet occur to the benefit of the customers served by each utility.

7.12 While the Board appreciates ICG's intent to delineate service areas, the Board dismisses ICG's "Buffer Zone" proposal as being a delineation solely of its invention, and notes that ICG's proposal has been rejected by Consumers Gas.

7.13 The Board views the increased security of supply that will result from a second supply route as being desirable and expects the parties to cooperate in establishing a link between the two systems serving the Oro and Medonte Townships.

7.14 The Board considers the difference in the forecasts presented by the parties to be insignificant. The Board finds that both ICG's and Consumers Gas' forecasts individually, or in combination, confirm the reasonableness of anticipated substantial increases in natural gas demands in the Horseshoe Valley area and

the need for new facilities to service these demands.

- 7.15 The Board agrees with Counsel to Board Staff that the rate differential between utilities is not, in and of itself, a sufficient basis for selecting the proposal of one utility over another. The Board observes that to give preference on that basis would inevitably lead to a situation where larger more mature utilities could, at will, continually encroach into the territories of smaller utilities.
- 7.16 The Board notes that the environmental impact evidence of each applicant was accepted by the other and left essentially untested. The Board finds that Consumers Gas' proposal is environmentally acceptable, given the condition that Consumers Gas undertakes the mitigation measures recommended in the report by its environmental consultants which was filed in these proceedings.
- 7.17 The Board finds that, given the competitive proposals that are before it, it would not be in the public interest to grant ICG's application for a variance of its certificate of public convenience and necessity. The Board, therefore, denies ICG's application, and in doing so affirms its prior decisions in

E.B.C. 102, E.B.C. 139-A, E.B.C. 183 and E.B.C. 187, and restricts ICG to construct works to supply gas and to supply gas to the Hamlet of Edgar, the Edgar Educational Centre Complex and to that area of Horseshoe Valley bounded by Simcoe County Road No. 22 to the north, Simcoe County Road No. 57 to the west, the present outward boundary of the Horseshoe Valley Golf Club to the east and the present outward boundary of the Horseshoe Valley Ski Resort to the south. Notwithstanding the above limitations, the Board authorizes ICG to continue to supply gas to its customers of record in Oro Township as of the date of this Decision.

7.18 The Board finds that Consumers Gas has adequately defined the need for its proposed facilities, has dispelled any concerns over potential environmental impacts and has satisfied the Board that its proposed project is economically viable. The Board, therefore, finds Consumers Gas' proposed project to be in the public interest.

7.19 The Board grants Consumers Gas' application for leave to construct a 4 inch diameter pipeline along the proposed general route, provided that Consumers Gas employs the mitigation measures recommended by its environmental consultants,

fulfills the undertakings that it has made in its evidence and testimony, and satisfies the conditions contained in Appendix A. The Board notes that Consumers Gas has not, to this point in time, objected to the conditions of approval as proposed to it by Board Staff, and as contained in Appendix A. The Board interprets this silence to be an indication of Consumers Gas' acceptance of these conditions.

8. COMPLETION OF THE PROCEEDINGS

- 8.1 The Board grants Consumers Gas leave to construct a 4 inch diameter natural gas pipeline as described in its application and evidence.
- 8.2 Consumers Gas shall, in general, follow the pipeline route, defined in its evidence, for the proposed pipeline as it extends westerly, from the Company's existing 8 inch diameter gas pipeline, along Simcoe County Road 22 from Lot 1, Oro Concession XI to Lot 1, Oro Concession IV, and then southerly on Oro Concession Road 4 to Lot 4.
- 8.3 In addition, Consumers Gas shall, as a condition of the Board granting leave to construct, comply with the conditions set forth in Appendix "A" to this Decision.

8.4 The Board denies ICG's application for a variance of the Certificate of Public Convenience and Necessity E.B.C. 139-A.

8.5 The Board affirms its earlier Decisions in E.B.C. 102, E.B.C. 139-A, E.B.C. 183, and E.B.C. 187, and finds that ICG shall be limited to servicing the area within the Township of Oro which is presently being served by ICG, such area being more specifically described as follows:

- The Hamlet of Edgar
- The Edgar Educational Centre Complex
- The area bounded by Simcoe County Road 22 in the north, Simcoe County Road 57 in the west, the present outward boundary of the Horseshoe Valley Ski Resort to the south and the present outward boundary of the Horseshoe Valley Golf Club to the east.

8.6 The Board directs ICG to provide to the Board a legal description of the above boundaries within 30 days of the date of this Decision with Reasons.

8.7 The Board directs that, notwithstanding the above limits, ICG shall be authorized to

DECISION WITH REASONS

continue to service all customers of record in Oro Township as of the date of this Decision.

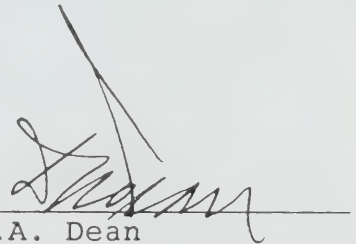
- 8.8 The Board, in due course, will issue the necessary orders implementing this Decision.

9. COSTS

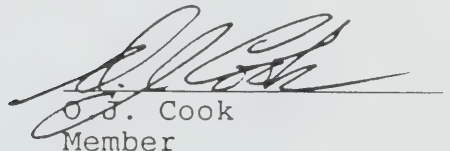
- 9.1 The Board, in due course, will issue a cost order charging 50 percent of its total costs in this proceeding to Consumers Gas and 50 percent to ICG, as applicants in this combined proceeding.
- 9.2 The Board is particularly appreciative of the assistance that Mr. Wollstein Sr. provided in clarifying the development plans for the Horseshoe Valley area, and in resolving the differences between ICG's and Consumers Gas' market forecasts. Considering Mr. Wollstein Sr.'s position and responsibilities, the Board further appreciates that he volunteered to interrupt what the Board assumes must be a busy schedule to assist the Board in these matters. The Board, therefore, awards Mr. Wollstein Sr. an honorarium in the amount of \$500 in

recognition of his voluntary contribution to these proceedings together with his out-of-pocket expenses. Mr. Wollstein Sr. should submit his claim for the latter, supported by receipts, to the Board Solicitor within ten days of the release of this Decision. The Board, in due course, will issue an order directing that the cost of such honorarium and out-of-pocket expenses be shared equally by ICG and Consumers Gas.

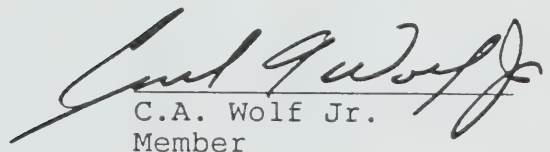
DATED at Toronto this 6th day of September, 1989



D.A. Dean
Presiding Member



O.J. Cook
Member



C.A. Wolf Jr.
Member

APPENDIX A

Consumers Gas
Conditions of Approval
Horseshoe Valley E.B.L.O. 232

- a) Subject to Condition (b), Consumers Gas shall comply with all undertakings made by its Counsel and witnesses, and shall construct the pipelines and restore the land according to its evidence and testimony.
- b) Consumers Gas shall advise the Board's designated representative of any proposed change in construction or restoration procedures and, except in an emergency, Consumers Gas shall not make any such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board or its designated representative shall be informed forthwith after the fact.
- c) Consumers Gas shall furnish the Board's designated representative with every reasonable facility for ascertaining whether the work has been and is being performed according to the Board's Order.

- d) Consumers Gas shall give the Board and the Chairman of the OPCC written notice of the pipeline construction prior to its commencement.
 - e) Consumers Gas shall designate one of its employees as project engineer who will be responsible for the fulfillment of conditions and undertakings on the construction site. Consumers Gas shall provide the name of the project engineer to the Board. Consumers Gas shall prepare a list of the undertakings given in its evidence and by its witnesses during the hearing and provide such list to the Board for verification and to the project engineer for compliance during construction.
 - f) Consumers Gas shall file with the Board Secretary notice of the date on which the installed pipeline is tested within one month after the test date.
 - g) Consumers Gas shall file "as-built" drawings of the pipeline; such drawings shall indicate any changes in route alignment.
 - h) Within 12 months of the in-service date, Consumers Gas shall file with the Board a written Post Construction Financial Report. The Report shall indicate the actual capital
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DECISION WITH REASONS

costs of the project and shall explain all significant variances from the estimates adduced in the hearing.

- i) The Leave to Construct granted herein shall terminate on December 31, 1990.

